S.B.Civil Writ Petition NO.5029/2003

Smt. Pushpa Kanwar vs. Union of India & ors.

DATE OF ORDER : - 27.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. M Mridul, Sr.Adv. A/w Mr. Sandeep Shah, for the petitioner.

Mr. Rameshwar Dave, Dy. GA, for the respondent State.

Mr. Jitendra Chopra, for respondent IOC.

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Heard learned counsel for the parties.

The petitioner is a war widow and is seeking allotment of land for establishing a retail outlet of petrol pump. The petitioner submitted an application before the concerned authority in accordance with law and that was considered by the concerned authorities. The petitioner pointed out that she may be given land anywhere at the placed mentioned in Annex.3. On the application of the petitioner, IOC granted retail outlet license to the petitioner and that request was made to the District Collector for allotting the land to the petitioner on proirity. IOC also recommended for allotment of land between Rajsamand Nathdwara.

The petitioner thereafter submitted an application before the Collector on 16.8.2001 pointed out that the land of Khasra No.1463/1353

Min measuring 10 bighas 5 biswas situated on National Highway No.8 on Rajsamand Nathdwara Road – 2 kms. away from the Transport Nagar is available and also submitted that though the said land is recorded as pasture land but out of this very land, a land having no.1530/1463 has already been allotted to the mining department and she also pointed out that because of the slurry put by the marble traders, the land is no more pasture land, therefore, the same may be allotted to the petitioner for establishing the petrol pump.

The petitioner's aforesaid request was not accepted and the petitioner was informed by letter dated 20.11.2001 that the land suggested by the petitioner is not available for allotment.

According to learned counsel for the petitioner, the petitioner suggested the land of Khasra No.1463, 1353 and 1530 but the authorities have not considered the land of khasra no.1530.

Learned counsel for the petitioner further submitted that the authorities have not considered that the said land, after the activities of marble traders, is no more pasture land and it cannot remain pasture land and it has only become a waste land and have wrongly rejected the petitioner’s prayer for allotment of land referred in Annex.6.

Learned counsel for the respondents submits that the matter was

thoroughly examined and it was found that the land of khasra no.1463/1353 Min has been recorded as pasture land in the revenue record. According to the report of the Tehsildar, Rajsamand, placed on record as Annex.R/1, the land is situated on NH No.8 on Udaipur Ajmer Road and after leaving 150 feet from the center of road, their remains only 12 meter wide land. Looking to the total width of the land, this cannot be allotted as the allottee is required to leave some space and thereafter there will be no suitable land available for establishing retail outlet.

I have considered the rival submissions and perused the documents.

It appears that the petitioner might have proceeded on wrong assumption that the land which she suggested in Annex.6 are four different lands having khasra no.1463, 1353, 1530 and again 1463 whereas it appears that one land is khasra no.1463/1353 Min and second land is having no.1530/1463. Be it as it may be. According to learned counsel for the petitioner, the respondents did not consider the land of khasra no.1530/1463. For this also, it appears that there is some confusion because it appears that land of khasra no.1530/1463 is the land which is allotted to the mining department but the fact is not clear

even from the reply because in the reply, there is no mention of land of khasra no.1530/1463 neither it has been mentioned in Annexures-R/1 and R/2 (wrongly mentioned as Annexures-1 and 2 in the documents annexed with the reply).

It is also clear from the impugned order dated 20.11.2001 that whether the land is no more pasture land, has also not been considered.

Apart from the above, there appears to be force in the submission of learned counsel for the petitioner that even if the land which the petitioner suggested is not available for allotment still when the petitioner is eligible for allotment of the land and her allotment has not been denied because of her ineligibility, then it is for the State to allot the land as the petitioner has already been given license for establishing the petrol pump by IOC as the petitioner is a war widow and is eligible for land as well as petrol pump.

In view of the above, the respondents are directed to consider the case of the petitioner for allotment of land between Rajsamand and Nathdwara as for this location, IOC has sanctioned allotment of outlet. The case be decided by the allotment authority within two months from the date of receipt of the order. It is also pertinent to mention here

that the rejection of the allotment of the land to the petitioner vide order dated 20.11.2001 is only rejection of allotment of land for which the petitioner sought allotment and that does not mean that she became ineligible to have the allotment of land anywhere despite the fact that she is eligible and has not been found ineligible by the authorities concerned. The suggestion of the petitioner for land was only a suggestion and if it was rejected, the authorities themselves should have worked out where the land could have been allotted by calling the petitioner by getting proposal from the petitioner or by giving suggestion themselves to the petitioner so that the petitioner could have known where the land is available.

With the aforesaid directions and observations, this writ petition is allowed.

(Prakash Tatia), J.

s.phophaliya/-